

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Universal Service Contribution)	WC Docket No. 06-122
Methodology)	
)	

COMMENTS OF HYPERCUBE TELECOM, LLC

HyperCube Telecom, LLC (“HyperCube”), by its attorneys, hereby files these Comments in response to the August 2, 2013, Public Notice (the “Notice”) seeking comment on sample reseller certification language for the 2014 Form 499-A Instructions.¹ The proposed sample language was submitted by a group of eight industry participants (the “Industry Group”) that had met to develop alternate language to implement the Commission’s *Wholesaler-Reseller Clarification Order*.² Like the members of the Industry Group, HyperCube operates as a wholesale provider of telecommunications services and, in some instances, as a reseller of services obtained from others. HyperCube will be required to implement new reseller certification procedures as a result of the *Wholesaler-Reseller Clarification Order*. HyperCube supports the Industry Group’s proposal, and urges the Commission to make clear, as the proposal does, (1) that wholesale carriers have the flexibility to rely upon procedures that obtain

¹ *In The Matter of Universal Service Contribution Methodology*, Public Notice, WC Docket No. 06-122 (rel. Aug. 2, 2013) (“Notice”).

² *Universal Service Contribution Methodology, Application for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications, XO Communications Services, Inc. Request for Review of Decision of the Universal Service Administrator, Universal Service Administrative Company Request for Guidance*, 27 FCC Rcd 13780 (2012) (“*Wholesaler-Reseller Clarification Order*”).

certifications at a level the wholesale provider determines best comports with its internal capabilities and processes and (2) that wholesale providers are permitted to rely upon annual certifications with respect to all services purchased during the relevant year, including services purchased after the date of the certification. These two clarifications are essential to ensuring that the Commission's *Wholesaler-Reseller Clarification Order* can be implemented by the industry in practical and efficient ways.

I. WHOLESALE PROVIDERS REQUIRE FLEXIBILITY TO IMPLEMENT THE NEW CERTIFICATION AT THE ENTITY, ACCOUNT OR SERVICE SPECIFIC LEVEL AS THEIR CAPABILITIES PERMIT

In the *Wholesaler-Reseller Clarification Order*, the Commission clarified that, for purposes of the Universal Service rules, a reseller must “not only (1) incorporate[] purchased telecommunications into its own service offerings; but *also* (2) contribute[] to the Fund based on revenues from those offerings.”³ This new service-specific understanding of the reseller definition, the Commission recognized, would require changes to wholesale carriers’ operating, reporting and financial procedures implemented in reliance on the previous resale certification language (which many carriers interpreted as permitting entity-based certifications).⁴ In implementing this change, the Commission should recognize that wholesale carriers will have different capabilities in the operating, reporting and financial processes used to track reseller services for USF purposes. Accordingly, it is important for the revised Form 499-A instructions to permit wholesale carriers flexibility in how to implement the requirement consistent with their own processes.

³ *Wholesaler-Reseller Clarification Order*, ¶ 31.

⁴ *Id.* at ¶ 41.

The Industry Group proposal incorporates this flexibility. In footnote 4 of its proposed Form 499-A instruction language, the Industry Group proposal states that a wholesale filer may rely on certificates collected at various levels. Specifically,

At the filer's discretion, the filer may rely on certificates that specify any of the following: (1) that all services purchased by the customer are purchased for resale pursuant to the certificate ("entity-level certification"); (2) that all services associated with a particular billing account, the account number for which the customer shall specify, are purchased for resale pursuant to the certificate ("account-level certification"); (3) that individual services specified by the customer are purchased for resale pursuant to the certification ("service-specific certification"); or (4) that all services except those specified, either individually or as associated with a particular billing account, the account number(s) for which the customer shall specify, are purchased for resale pursuant to the certificate.⁵

HyperCube supports the Industry Group's proposal. Nothing in the *Wholesaler-Reseller Clarification Order* mandated how a wholesale carrier must track its resellers for USF purposes. Nothing in the order required wholesale providers, for example, to implement systems that apply USF on a service-order-by-service-order basis. Instead, wholesale providers must retain the flexibility to rely on procedures that apply USF at the account or even entity level, so long as the certification is provided for all services falling within that category. The corresponding Form 499-A instructions should make this flexibility clear.

HyperCube, for example, intends to implement the Order at the account level. A HyperCube customer is assigned a billing account number ("BAN") for each type of service that

⁵ Letter from AT&T Services, Inc., BCE Nexxia, BT Americas Inc., CenturyLink, Orange Business Services U.S., Inc., Spring Corporation, Verizon, and XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at n.4 (filed July 26, 2013).

it receives, and all such services of that type are billed using that BAN.⁶ To implement the *Wholesaler-Reseller Clarification Order*, HyperCube will ask its resellers to certify that all services ordered under a particular BAN are for resale as that term is clarified in the Order. If a customer cannot certify that all such services qualify, either USF will be applied to all services or the customer will be required to establish a separate BAN for those services that do not qualify. Either way, HyperCube will be turning the reseller classification “on” or “off” at the BAN level.

This approach is efficient for the wholesale provider while still providing the requisite assurance that resellers are contributing based on end user revenues received from services that incorporate the wholesale service. Such a system would still obligate the reseller to certify that each individual service under the BAN will be resold, at least in part, as telecommunications to an end user, and therefore qualifies as reseller service under the *Wholesaler-Reseller Clarification Order*. The Commission should adopt the Industry Group’s footnote 4 to protect this reasonable and flexible approach to implementing its Order.

II. RESELLER CERTIFICATIONS SHOULD BE VALID FOR THE ENTIRE YEAR

The reseller certification is a snapshot in time. Both before and after the certification, a reseller will be purchasing individual services from the wholesale carrier. In recognition of this, wholesale providers need a clear guideline by which they may establish a reasonable expectation that all services purchased during the year are being purchased for resale purposes. The Industry Group addresses this concern by recommending that the Commission

⁶ As a result, every customer has at least one BAN; some have more than one. A customer receiving three different types of services from HyperCube will have (at least) three BANs under which services are billed.

allow a wholesaler to establish a reasonable expectation for services purchased after the date of the certification based upon either “(1) a notification from the customer that the customer is purchasing the service for resale consistent with the annual certificate; or (2) a later certificate covering the purchased service signed by the customer.”⁷ HyperCube encourages the Commission to adopt an approach that provides the flexibility the Industry Group recommends.

The Industry Group’s proposal prevents the day-to-day ordering process from becoming bogged down by repetitive certifications. Instead of having to certify constantly – or at least every time a new service is ordered – the reseller only needs to certify once per year, either through a confirmation notice to the wholesaler or through a new annual certification. This process will provide the requisite level of due diligence for reseller purchases, and will ensure that resellers are in fact contributing on revenues received from the offerings that incorporate the purchased service. At the same time, allowing wholesale providers to rely upon annual certifications minimizes the administrative burden of conducting that due diligence. Therefore, the Commission should make clear that a reseller’s certification need be obtained only once annually, and can be verified either via a subsequent confirmatory notification or the next annual certification.

III. CONCLUSION

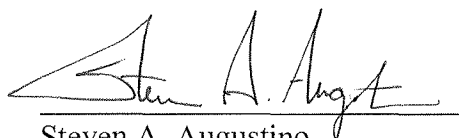
For the foregoing reasons, HyperCube urges the Commission to adopt in its 2014 Form 499-A Instructions the Industry Group’s proposal. The proposal will allow wholesale providers the flexibility needed to most easily integrate the new service-specific requirements into their systems while still ensuring compliance with all Universal Service obligations.

⁷ *Id.*

Similarly, the proposal will allow wholesale providers to obtain annual certifications, rather than a constant stream of individual certifications throughout the course of a year. In these ways, the Industry Group's proposal has outlined an appropriate balance between regulatory compliance and administrative convenience.

Respectfully submitted,

HYPERCUBE TELECOM, LLC

A handwritten signature in black ink, appearing to read "Steven A. Augustino", written over a horizontal line.

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September 6, 2013